5-31-2005

Speight v. Nash

HPS–92 (April, 2005) **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 05-2011

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CEARFUL SPEIGHT, JR.,
Appellant
v.

WARDEN JOHN NASH

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On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 05-cv-00319)
District Judge: Honorable Freda L. Wolfson

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Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
April 29, 2005
Before: SCIRICA, Chief Judge, WEIS and GARTH, Circuit Judges.
(Filed: May 31, 2005)

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OPINION

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PER CURIAM.

Cearful Speight filed a petition pursuant to 28 U.S.C. § 2241 to challenge his conviction and sentence for conspiracy to distribute cocaine and crack in violation of 28 U.S.C. §§ 841 & 846. He claimed that his indictment was void because he was not therein charged with an independent substantive offense; that the trial court, in effect, amended the indictment to include an aggravating offense at the sentencing phase; and

that the trial court enhanced his sentence using facts not found by the jury or admitted by Speight. The District Court, determining that 28 U.S.C. § 2255 was not an inadequate or ineffective means by which Speight could bring his claims, dismissed Speight's petition. Speight filed a motion for reconsideration, which was denied. Speight appeals. Because this appeal presents no substantial question, we will summarily affirm.

Speight cannot bring his petition under 28 U.S.C. § 2241, because a motion to challenge his conviction and sentence pursuant to 28 U.S.C. § 2255 is not "inadequate or ineffective." 28 U.S.C. § 2255 (2005). Although Speight's claims appear at first blush to be based on *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999), *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), and *Apprendi*'s progeny, Speight purports to ground his arguments in *In re Winship*, 397 U.S. 358 (1970). No matter which of these cases he relies on, 28 U.S.C. § 2255 is not an inadequate or ineffective way to bring his claims. *See Okereke v. United States*, 307 F.3d 117, 120-21 (3d Cir. 2002); *United States ex rel. Leguillou v. Davis*, 212 F. 2d 681, 684 (3d Cir. 1954). Therefore, the District Court properly dismissed Speight's petition for lack of jurisdiction and declined to grant his motion for reconsideration.[1]

For the reasons stated above, the District Court's orders will be summarily affirmed.

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[1]As the District Court noted in response to Speight's argument that the Suspension Clause was violated by the dismissal of his petition for lack of jurisdiction, "the substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention does not constitute a suspension of the writ of habeas corpus." *Swain v. Pressley*, 430 U.S. 372, 381 (1977).